



**American National
Standards Institute**

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D-U-N-S 07-329-4837

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: GC Docket
No. 96-42

APR 11 '96

RECEIVED

Dear Mr. Caton:

Attached herewith are comments of the American National Standards Institute (ANSI) in reply to the Notice of Proposed Rulemaking in the matter of implementation of Section 273)d)(5) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards.

Sincerely,

Frances Schrotter
(per)

Frances Schrotter
Vice President,
Standards Facilitation

American National Standards Institute
11 West 42nd Street
New York, New York 10036
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Implementation of Section 273(d)(5))	
of the Communications Act of 1934)	GC Docket
as amended by the Telecommunications)	No. 96-42
Act of 1996 - - Dispute Resolution Regarding)	
Equipment Standards)	

**COMMENTS OF THE AMERICAN NATIONAL
STANDARDS INSTITUTE (ANSI) IN REPLY
TO NOTICE OF PROPOSED RULEMAKING**

April 11, 1996

American National Standards Institute
11 West 42nd Street
New York, New York 10036
Attention: Amy A. Marasco

American National Standards Institute
655 15th Street, N.W., Suite 300
Washington, D.C. 20005
Attention: Jane Schweiker

SUMMARY

In response to the Commission's Notice of Proposed Rulemaking (the "NPRM") for the purpose of implementing the new Section 273(d)(5) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Corning Incorporated ("Corning") submitted Comments dated March 21, 1996. In those Comments, Corning proposed that the Commission consider adopting what Corning described as an "accelerated consensus" procedure as an alternative to the arbitration process described in the NPRM. As part of the accelerated consensus procedure, Corning recommended that the Commission require that disputes arising in connection with a non-ANSI accredited standards developing organization ("NASDO") be referred to an ANSI accredited standards developing organizations ("SDO"). The SDO, through its committees of experts, would act as a mediator and determine whether consensus had been achieved in connection with a proposed standard or related action taken by the NASDO.

By letter dated March 27, 1996 from David H. Solomon, FCC Deputy General Counsel, to Ms. Frances Schrotter, ANSI's Vice President of Standards Facilitation, the Commission forwarded to ANSI a copy of Corning's proposal and requested that ANSI comment on it. ANSI was asked to identify what role, if any, ANSI is willing to undertake vis-a-vis the dispute resolution process.

ANSI¹ is filing these Comments in response to this request from the FCC.

¹ ANSI is a not-for-profit, privately funded membership organization that administers and coordinates the voluntary standardization system in the United States with the cooperation of federal, state and local governments. ANSI does not write standards; it serves as a catalyst for standards development by its diverse membership. This membership consists of approximately 1,300 companies (accounting for sales of approximately \$1.2 trillion), 250 professional, technical, trade, labor, academic and consumer organizations, and some 30 government agencies.

Among other things, ANSI accredits standards developers and approves standards as American National Standards. ANSI also is the United States representative to the two major, non-treaty international standards organizations: The International Organization for Standardization (ISO) and, through the United States National Committee, the International Electrotechnical Commission (IEC). In this role, ANSI is responsible for

ANSI'S COMMENTS

As set forth below, ANSI would like to first comment on the formal standards development process as it is implemented by ANSI-accredited SDOs, and then set forth its position on the Corning proposal.

A. The ANSI Process

ANSI appreciates Corning's and other's recognition of the intrinsic value of ANSI accreditation and the formal voluntary standards development process that ANSI and its accredited SDOs represent.

ANSI accredits SDOs to develop American National Standards. SDOs can be any type of organization. Their standards development procedures must conform to ANSI's due process and consensus requirements. These requirements include:

1. Openness: Any materially affected party must have the ability to participate in the standards development process, either as a voting member of the consensus body or by submitting comments during the public review period.
2. Balance and Lack of Dominance: The consensus body should consist of experts and representatives from a balance of interest groups such as users, producers, regulatory bodies, etc. as appropriate. No individual party or interest group may dominate the process.
3. Consensus: Consensus is obtained through two primary mechanisms: approval of the standard by the consensus body and attempted resolution of comments from consensus body members and from public review commentators.

representing U.S. interests at the policy level of both organizations as well as for facilitating U.S. participation in the various technical committees which develop international standards. To do the latter, ANSI accredits U.S. Technical Advisory Groups to ISO technical committees and appoints the U.S. Technical Advisors to the IEC Technical Committees.

4. Appeals Mechanism: Each SDO must have an appeals mechanism that is available to any materially affected party. The appeal may address technical or procedural matters. The appeals process must be fair and unbiased, and should afford an appellant the right to participate without imposing an undue burden.

5. Patent Policy: The SDO must comply with the terms of the ANSI Patent Policy, which requires a holder of a patent implicated by a proposed standard to agree to license its technology on reasonable and non-discriminatory terms. If the patent holder is not willing to agree to abide by the Patent Policy, then the consensus body must consider its alternatives such as modifying the standard to delete any reference to the patented technology. ANSI's Patent Policy is virtually identical to ISO and IEC's patent policy governing international standards.

Typically antitrust violations occur in connection with standards development activities when a person or entity intentionally and unfairly manipulates the process to gain an unfair competitive advantage. One of the benefits of the ANSI process is that its due process, openness and balance of interests requirements make the process transparent. Any antitrust issue is likely to become very visible and addressed early on in the process.

Because they understand the benefits associated with the standards development process implemented by the ANSI-accredited SDOs, many regulatory agencies participate in this process and subsequently adopt the resulting standards into regulations or make reference to them.

ANSI is very willing to provide additional information regarding its accreditation, standards approval and other processes upon request.

B. The Corning Proposal

ANSI has decided that it is unable to take a position on the Corning proposal because its community has diverse views on the subject. However, in accordance with ANSI's role as described above, the Institute would be willing to serve as an information

source for the Commission regarding ANSI's accredited SDOs and the formal standards development process.

Dated: New York, New York
April 11, 1996

Respectfully submitted,

A handwritten signature in cursive script, reading "Frances Schrotter", underlined.

Frances Schrotter
Vice President,
Standards Facilitation

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